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10/743,222	12/22/2003	Timothy J. Blenke	KCC 4932 (K-C 18,580)	7640
321	7590	11/05/2007	EXAMINER	
SENNIGER POWERS			KRUER, KEVIN R	
ONE METROPOLITAN SQUARE				
16TH FLOOR			ART UNIT	PAPER NUMBER
ST LOUIS, MO 63102			1794	
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			11/05/2007	ELECTRONIC

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/743,222  
Filing Date: December 22, 2003  
Appellant(s): BLENKE ET AL

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Christopher M. Goff  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed July 27, 2007 appealing from the Office action mailed March 19, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

09/945,239

10/260,951

10/266,440

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

20002/0123538 A1	ZHOU et al	09-2002
5904672	LeMAHIEU et al	05-1999
5176668	BERNARDIN	01-1993

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

3. Claims 1-10, 13, 16, 26, 79-88, 91,94, and 104 stand rejected under 35 U.S.C. 102(b) as being anticipated by Zhou et al (US 2002/0123538 A1).

Zhou teaches an adhesive comprising an atactic polymer having a degree of crystallinity of less than about 20% and a number average molecular weight between about 1,000 and 300,000; and an isotactic polymer having a degree of crystallinity of at least about 40% and a number-average molecular weight between about 3,000 and 200,000 (claim 1). The atactic polymer may be polypropylene (claim 18), as is the isotactic polymer (claim 21). The adhesive is melt processable at less than about 4000 degrees Fahrenheit (claim 11) and the adhesive has a melt index of about 100 to about 20000 grams per 10min (claim 14). The atactic polymer comprises about 50-90wt% atactic polymer and between about 5-50wwt% isotactic polymer (claim 17). The adhesive may comprise various filler 90071) and may be used to "ultrasonically" (0067) bond polyethylene to polypropylene (paragraph 0059 and 0072).

The examiner further notes that the adhesive may be utilized to laminate absorbent articles such as those incorporated by reference in paragraph 0072. One of

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said references, US 5,176,668, teaches the bonding together of a polypropylene liner and a polyethylene outer film (col 7, lines 24+). A second of said incorporated references, US 5,904,672, also teaches bonding polypropylene to polyethylene (col 6, lines 9-47 and examples). Since polyethylene and polypropylene are appellant's elected "first material" and "second material" species (see election of 6/27/05), said films are understood to read on the "dissimilar material" limitations of the pending claims.

#### **(10) Response to Argument**

Appellant's arguments have been fully considered but are not persuasive. Appellant argues Zhou fails to anticipate a laminated structure comprising an adhesive, a first material, and a second material wherein the first and second materials are "dissimilar" and are ultrasonically bonded together.

Appellant acknowledges Zhou teaches a laminate comprising "different" materials (0059) but argues Zhou fails to teach the "different" materials are "dissimilar" materials (defined in paragraph 0023 of the specification). The examiner respectfully disagrees. Appellant's elected "dissimilar" materials are polyethylene as the "first material" and polypropylene as the "second material" (see election of 6/27/05). The laminate of Zhou may comprise polyethylene and polypropylene materials bonded together using the adhesive taught therein (See the absorbent structures incorporated by reference in paragraph 0072; specifically, US 5,176,668 (col 7, lines 24+) and US 5,904,672 (col 6, lines 9-47 and examples)). Since said laminates comprise "first" and "second" materials that are compositionally identical to Appellant's elected "first" and "second" materials, said laminates were understood to inherently met the "dissimilar"

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limitation of claim 1. Appellant has failed to produce any evidence demonstrating that the polypropylene and polyethylene materials taught in Zhou do not necessarily or inherently possess the characteristics of the claimed product. Since Appellant has failed to meet their burden, the examiner's position is maintained.

If, in arguendo Zhou teaches the use of "dissimilar" materials, Appellant argues Zhou fails to anticipate a laminate wherein "dissimilar" first and second materials are ultrasonically bonded together. The examiner initially notes that Appellant has failed to provide evidence demonstrating the process limitation "ultrasonic bonding" results in a materially different product. As noted in MPEP2113 {R-1}, Appellant has the burden to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product resulting from a process limitation of a product claim.

Furthermore, the examiner takes the position that Zhou anticipates the claimed "ultrasonic bonding" laminate. Specifically, Zhou teaches the adhesive may be used to "ultrasonically" bond different materials (0067). While the examiner concedes there is no explicit teaching of an embodiment in which polypropylene and polyethylene are "ultrasonically bonded," the reference does not need such an explicit teaching to anticipate the claimed invention. Rather, the proper analysis is whether a skilled artisan, given the teachings of Zhou, would have been in possession of the claimed subject matter. The examiner maintains the position a skilled artisan, given the teachings of Zhou that (1) the laminate may comprise a polyethylene and a polypropylene laminated together with the disclosed adhesive (0072) and (2) that the disclosed adhesive may be utilized to ultrasonically bond various laminates (0067)

comprising different materials, would have been in possession of the claimed subject matter. Appellant argues there must be an enabling disclosure of how to ultrasonically bond dissimilar materials as required by Appellant's claim 1 in order to anticipate the claim. Said argument is noted but is not persuasive because, other than noting there is no explicit example in Zhou of ultrasonically bonding polyethylene to polypropylene, Appellant has failed to provide any argue as to how the disclosure of Zhou is lacking in this regard. Specifically, appellant has failed to show why ultrasonically bonding "dissimilar" materials would require additional disclosure to be enabling above and beyond the enabling disclosure of Zhou teaching how to ultrasonically bond similar or "different" materials.

Appellant argues neither '668 nor '672 teaches bonding the polyethylene and polypropylenes together utilizing "ultrasonic bonding." Said argument is noted but is not persuasive because neither reference was relied upon for such a teaching. Rather, Zhou teaches that the adhesive taught therein may be used to ultrasonically bond different materials, such as those taught in '668 and '672. For the reasons noted above, the rejection is maintained.

For the reasons noted above, the rejections are maintained.

#### **(11) Related Proceeding(s) Appendix**

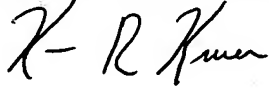
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Kevin R. Kruer-Primary Patent Examiner-Art Unit 1794



Conferees:

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